122 FERC ¶ 61,115
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Quicksilver Resources, Inc. Docket No. CP08-7-000
BreitBurn Operating L.P.

DECLARATORY ORDER ON JURISDICTION

(Issued February 8, 2008)

1. On October 5, 2007, Quicksilver Resources, Inc. (Quicksilver) and BreitBurn Operating L.P. (BreitBurn) filed a petition, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure,[1] for a declaratory order stating that Quicksilver is a natural gas gatherer, and therefore not subject to the Commission's Natural Gas Act (NGA) jurisdiction.[2] For the reasons discussed below, the Commission determines that Quicksilver's facilities upstream of the Cardinal station perform a gathering function. Accordingly, pursuant to NGA section 1(b), these facilities are not subject to the Commission's jurisdiction. The 8.3-mile Cardinal line extending downstream from the Cardinal station to an interconnection with Texas Gas Transmission, LLC (Texas Gas), however, is performing a transportation function, and thus subject to the Commission's jurisdiction under NGA section 7(c).

I. Background and Proposal

2. Quicksilver is an independent oil and gas company engaged in the development and production of natural gas, natural gas liquids, and crude oil in Texas, Indiana, Kentucky, Michigan, Montana, and Canada. Quicksilver seeks a gathering determination for its operations in the Corydon Field, part of the Illinois Basin, which straddles adjacent portions of south central Indiana and north central Kentucky. Quicksilver states that the Corydon Field is a shale formation that is characterized by low production rates per well, low wellhead pressure, high water content, and high carbon dioxide content.

[1] 18 C.F.R. § 385.207 (2006).

[2] 15 U.S.C. § 717, *et seq*. (2005).

3. Quicksilver's facilities consist of two sets of pipeline components: (1) three distinct upstream subsystems that collectively include approximately 134 miles of 2- to 10-inch diameter pipeline feeding gas from about 200 wells through three field compressor stations (Wimp and Danner in Indiana, and Olin in Kentucky); and (2) a 20.4-mile backbone line with three segments of 8- to 12-inch diameter pipeline that receives an average of 6,000 Mcf per day from the three subsystems. Immediately downstream from the Olin station (the last field station that receives gas from the subsystem wellheads) is the Cardinal station, which Quicksilver describes as the station where gas is processed to transmission pipeline quality standards by dehydrating the gas and removing carbon dioxide. After processing at the Cardinal station, the gas travels 8.3 miles farther downstream to the Texas Gas line.

4. Quicksilver contends that the three field compression stations – Wimp, Danner, and Olin – are necessary to pull enough gas into its facilities to produce in commercially viable quantities. The Wimp subsystem, the farthest upstream of the subsystems, consists of 101 wells in Indiana that supply gas into 73 miles of 2- to 10-inch diameter pipe. The Wimp field station provides 1,200 horsepower (hp) of compression, separates salt water from the gas, and dehydrates the gas. The Danner subsystem consists of 80 wells in Indiana that supply gas into 54 miles of 4- to 10-inch pipe. The Danner field station provides 850 hp of compression, removes salt water, and dehydrates the gas. The Olin subsystem consists of 15 wells in Indiana and Kentucky that supply gas into 8.3 miles of 4- to 12-inch pipe. The Olin field station provides 850 hp of compression, removes salt water, and dehydrates the gas. The Olin station supplies the Arch Chemical Plant with untreated gas for feed stock through a 0.3-mile long, 6-inch diameter lateral line with a normal operating pressure of 500 pounds per square inch (psi).

5. Quicksilver states that the backbone, or spine-type configuration, pipeline is sectioned into three segments totaling 20.4 miles: from the Wimp to the Danner station runs the Wimp-Danner line, which is 3.6 miles of 8-inch diameter pipe with a normal operating pressure of 750-850 psi; from the Danner to the Olin station runs the GTG line, which is 8.5 miles of 8-inch diameter pipe with a normal operating pressure of 850 psi; and from the Cardinal station to the Texas Gas interconnect runs the Cardinal line, which is 8.3 miles of 12-inch diameter pipe with a normal operating pressure of 500-600 psi and a maximum operating pressure (MAOP) of 1440 psi. Quicksilver represents that the highest operating pressure attained in the last three years on the Cardinal line was 860 psi.

6. Quicksilver states that on September 11, 2007, Quicksilver entered into an agreement to convey its natural gas producing interests in the Corydon Field to BreitBurn. BreitBurn is a wholly-owned affiliate of BreitBurn Energy Partners L.P., an independent oil and gas limited partnership that acquires and develops oil and gas properties. Breitburn's assets primarily consist of producing and non-producing crude oil and natural gas reserves located in the Los Angeles Basin in California, the Wind River

and Big Horn Basins in central Wyoming, the Permian Basin in West Texas, and the Sunniland Trend in Florida. In anticipation of this conveyance, Quicksilver and Breitburn seek a determination that the Corydon Field facilities are exempt from the Commission's jurisdiction because they perform a gathering function.

II. Procedural Matters

7. Public notice of Quicksilver's petition in Docket No. CP08-7-000 was published in the *Federal Register* on November 6, 2007.[3] Louisville Gas and Electric Company (Louisville) filed a timely motion to intervene with comments.[4] Louisville seeks limited rights of discovery in this proceeding. Louisville's concerns are addressed below.

III. Discussion

A. Primary Function Test

8. Under section 1(b) of the NGA, the Commission's jurisdiction does not extend to facilities used for the production or gathering of natural gas, or to gathering services.[5] The NGA itself, however, does not define the term "gathering." As a result, over the years the Commission has developed a legal test to determine which facilities are non-jurisdictional gathering facilities and which facilities are jurisdictional transmission facilities. To determine a facility's function, the Commission relies on the "primary function test," which considers the physical and geographical attributes of a facility, including: (1) the length and diameter of pipelines; (2) the extension of the facility beyond the central point in the field; (3) the facility's geographical configuration; (4) the location of compressors and processing plants; (5) the location of the wells along all or part of a facility; and (6) the operating pressures of the pipelines.[6]

9. In addition to the physical and geographical factors, the Commission also considers the purpose, location, and operation of the facilities, the general business

[3] 72 Fed. Reg. 62,640 (2007).

[4] Timely, unopposed motions to intervene are granted by operation of Rule 214(a) of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214 (2007).

[5] The courts have narrowly construed the NGA section 1(b) exemption to "the physical acts of drawing gas from the earth and preparing it for the first stages of distribution." *See, e.g., Transcontinental Gas Pipe Line Corp. v. State Oil and Gas Board*, 474 U.S. 409, 418 (1986) (quoting *Northern Natural Gas Co. v. State Corp. Comm'n of Kansas*, 372 U.S. 84, 90 (1963)).

[6] *See, e.g., Amerada Hess Corp.*, 52 FERC ¶ 61,268 (1990) and *Farmland Industries, Inc.*, 23 FERC ¶ 61,063 (1983).

activities of the owner of the facility, and whether the jurisdictional determination is consistent with the NGA. The Commission does not consider any one factor to be determinative and recognizes that all factors do not necessarily apply to all situations.[7] The Commission weighs any and all other relevant facts and circumstances of a particular case, including the non-physical criteria.[8]

10. Applying the primary function test criteria to Quicksilver's facilities, the Commission finds that the primary function of the facilities upstream of the Cardinal station is gathering, while the primary function of the 8.3-mile Cardinal line facility is jurisdictional transmission that is not incidental to the gathering function of the upstream facilities.

1. Length and Diameter of the Pipelines

11. Quicksilver's backbone pipeline runs 20.4 miles and consists of 12.1 miles of 8-inch pipeline and 8.3 miles of 12-inch pipeline. The three subsystems that feed into the backbone line collectively include 134 miles of 2- to 12-inch pipeline. The Commission has found longer and larger lines to be gathering. In *EXCO Resources, Inc., TGG Pipeline, Ltd.*, we found a 53-mile backbone line with 23 miles of 12-inch diameter line, 30 miles of 16-inch diameter line, and a proposed addition of at least 52 more miles of 20-inch diameter backbone pipeline to be consistent with a gathering function.[9] Additionally, in *Straight Creek Gathering, LP*, we found 60 miles of 20-inch diameter backbone pipeline with several 4- to 12-inch lateral lines extending from the backbone to be a non-jurisdictional gathering system.[10] Therefore, we find that the length and diameter of Quicksilver's facilities are consistent with a gathering function.

2. Central Point in the Field

12. The central point in the field test is based on the idea that gathering involves the collection and movement of natural gas through various smaller lines to a central point where the gas is delivered into a single line for transmission.[11] Any facilities located upstream of the central point are generally considered non-jurisdictional gathering

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[7] *See, e.g., NorAm Gas Transmission Co.*, 75 FERC ¶ 61,127 at 61,429 (1996).

[8] *See ANR Pipeline Co.*, 76 FERC ¶ 61,153 (1996).

[9] 119 FERC ¶ 61,121, at P 12 (2007).

[10] 117 FERC ¶ 61,005, at P 13 (2006).

[11] *Arkla Gathering Services Co.*, 67 FERC ¶ 61,257 (1994).

facilities, while those downstream are considered jurisdictional transmission facilities.[12] The central point in the field test is typically used in the absence of a processing plant. Where there is a processing plant, the plant serves as the central point.[13]

13. In this case, the Cardinal station contains processing facilities that remove carbon dioxide and dehydrate the gathered gas, thereby preparing the gas to satisfy interstate pipeline transmission quality standards. Further, no additional residue gas enters the 8.3-mile Cardinal line before it connects with the Texas Gas transmission line. Therefore, the Commission finds that the Cardinal station functions as the central point of Quicksilver's gathering field, and facilities located upstream of the processing plant are non-jurisdictional gathering facilities.

3. Geographic Configuration

14. Quicksilver's facilities located in south central Indiana and north central Kentucky include a 20.4-mile backbone pipeline connected indirectly to about 200 wells arranged in three subsystems. The Wimp, Danner, and Olin subsystems each feed into the backbone pipeline before the Cardinal station, where gas is prepared for delivery into the Texas Gas transmission system. The Commission has previously found that spine-type configurations like this one are indicative of a gathering function.[14] Therefore, we find that the general spine-type configuration of Quicksilver's facilities is consistent with a gathering function.

15. Quicksilver's farthest downstream section of its facilities, the Cardinal line, is not incidental to the gathering function of the upstream facilities. The Cardinal line runs 8.3 miles from the Cardinal station to the interconnection with Texas Gas. The gas is prepared to interstate pipeline quality standards at the Cardinal station, and no residue gas enters the system below the Cardinal station. In *Amerada Hess II*[15] and *Superior Offshore Pipeline Company (SOPCO)*,[16] the Commission modified its policy regarding facilities located downstream from processing plants. The Commission explained that generally facilities located beyond a processing plant, other than incidental extensions such as stub lines, are jurisdictional transmission facilities. The Commission's decisions

[12] *El Paso Natural Gas Co.*, 57 FERC ¶ 61,186, at 61,648 (1991). *See also Florida Gas Transmission Co.*, 75 FERC ¶ 61,289, at 61,931 (1996).

[13] *See Minerals, Inc.*, 69 FERC ¶ 61,184, at 61,774 (1994).

[14] *Straight Creek*, 117 FERC ¶ 61,005 at P 61.

[15] *Amerada Hess Corp.*, 67 FERC ¶ 61,254, at 61,846 (1994).

[16] 67 FERC ¶ 61,253 (1994).

following *Amerada Hess II* have generally declined to extend the stub line exception beyond the five miles approved in *SOPCO*.[17]

4. Location of Compressors and Processing Plants

16. Quicksilver's facilities are composed of three subsystems that feed into the backbone pipeline at the Wimp, Danner, and Olin stations. Each station adds compression, removes salt water and dehydrates the gas before it enters the backbone pipeline. The Wimp station, the farthest upstream field station, adds 1,200 hp of compression, and the Danner and Olin stations add 850 hp of compression each. Quicksilver states that due to the low wellhead pressures indicative of shale formations, the field compression is necessary to pull enough gas into its facilities to produce in commercially viable quantities. The Commission finds that the location and function of the Wimp, Danner, and Olin stations are not inconsistent with a gathering function.

17. The Cardinal station is situated on the downstream side of the Olin station before the final 8.3-mile segment of backbone line. Quicksilver states the Cardinal station should not be considered a full-scale processing plant because it only dehydrates the gas and removes carbon dioxide to meet the pipeline quality specifications of Texas Gas. Despite Quicksilver's characterization, it is precisely because the Cardinal station brings the gas to pipeline quality standards that it is considered a processing plant, at least for purposes of weighing the primary function test criteria. This characterization is further supported by the fact that downstream of the Cardinal station, no residue gas is added to Quicksilver's contribution to the interstate transmission line. The primary function of the Cardinal line, therefore, is not consistent with a gathering function.

5. Location of the Wells

18. Quicksilver's backbone pipeline runs through a producing region with about 200 wells. The backbone facility serves to collect the gas in the three subsystems at the Wimp, Danner, and Olin stations. The Wimp station is fed by 101 wells, the Danner station by 80 wells, and the Olin station by 15 wells. Although no wells are connected directly to the backbone line, all of the wells are attached indirectly through the three subsystems. The Commission has previously held that the location of a facility in a production area surrounded by other gathering lines supports a non-jurisdictional

[17] *See, e.g., Western Gas Resources, Inc.*, 119 FERC ¶ 61,308 (2007) (10.9-mile line connecting gathering facilities to interstate transmission line found jurisdictional); *Rendezvous Gas Services, L.L.C.*, 113 FERC ¶ 61,169, at P 19 (2005) (facilities to which this exception apply are normally short stub lines at the tailgate of a processing plant that act to connect the tailgate of the plant with a transmission system).

finding.[18] Nevertheless, the fact that a pipeline is located in a producing area is not sufficient by itself to support a finding that a facility's primary function is gathering.[19] The Commission must examine the characteristics of particular facilities, not the characteristics of a region, to determine whether those facilities will perform a non-jurisdictional gathering function or a jurisdictional transmission function.[20] The Commission finds that the location of Quicksilver's wells, feeding indirectly into the backbone line upstream of the Cardinal station, is consistent with a gathering function. The Cardinal line, however, is not connected, directly or indirectly, to any wells or feeder lines. Therefore, the Commission finds that the lack of wells connected to the Cardinal line is not consistent with a gathering function.

6. Operating Pressures of the Line

19. Quicksilver states that normal operating pressures on the backbone line range from 500-850 psi, with MAOPs ranging from 1,000-1,200 psi. Between the Wimp and Danner stations, the Wimp-Danner line has an MAOP of 1,200 psi, a normal operating pressure of 750-850 psi, and a maximum pressure in the last three years of 880 psi. Between the Danner and Olin stations, the GTG line has an MAOP of 1,000 psi, a normal operating pressure of 850 psi, and a maximum pressure in the last three years of 880 psi. Quicksilver emphasizes that operating pressures are a function of the field compression necessary to facilitate the production of commercially viable quantities of gas from the low-pressure shale formation wells.

20. Generally, lower operating pressures are consistent with a gathering function. The Commission has acknowledged that gathering lines may have higher operating pressures that occur as a result of higher pressures in the field.[21] Here, the backbone line upstream of the Cardinal station operates at 500 to 850 psi. The Commission does not find these lines to be inconsistent with a gathering function. Therefore, the Commission finds that the operating pressure of the backbone is not necessarily inconsistent with a gathering function.

7. Additional Considerations

21. In addition to the primary function test, the Commission also considers relevant non-physical factors such as the purpose, location, and operation of the facilities, the

[18] *See, e.g., Southern Star Central Gas Pipeline, Inc.*, 115 FERC ¶ 61,057, at P 18-19 (2006).

[19] *Rendezvous*, 113 FERC ¶ 61,169 at P 29.

[20] *Id*.

[21] *See, e.g., ANR*, 76 FERC at 61,914.

general business activities of the owner of the facilities, and whether the jurisdictional determination is consistent with the NGA and the NGPA. Quicksilver's facilities run through a producing region, the Corydon Field in south central Indiana and north central Kentucky. Throughout all sections of the backbone facility, Quicksilver only moves its own gas to the interconnection with Texas Gas. The Commission finds that the general purpose, location, and operation of Quicksilver's facilities are not inconsistent with a gathering function.

22. Quicksilver states that it is an independent oil and gas company engaged in the development and production of natural gas, natural gas liquids, and crude oil. BreitBurn is an independent oil and gas limited partnership focused on the acquisition and development of oil and gas properties. Currently, neither Quicksilver nor BreitBurn own or operate any jurisdictional facilities. The Commission finds that the general business activities of Quicksilver are consistent with a gathering function.

23. Determining the primary function of a facility requires weighing all relevant factors. After considering these factors, the Commission concludes that the facilities upstream of the Cardinal station qualify as gathering under the primary function test. As such, these facilities are exempt from Commission jurisdiction under section 1(b) of the NGA. However, the Commission concludes that the primary function of the Cardinal line is jurisdictional transportation. Several important factors direct the Commission to the conclusion that the Cardinal line is not incidental to gathering, including its 8.3-mile length, the fact that interstate transmission pipeline quality gas moves the whole length of the line, and the lack of gas infusions before the interconnection with Texas Gas.

24. Because the Commission determines that the Cardinal line is a jurisdictional transmission line, Quicksilver is required to apply for a certificate of public convenience and necessity under section 7(c) of the NGA within 60 days of the issuance of this order if it wishes to continue transporting natural gas through that line. Further, we find that it is in the public convenience and necessity to issue a limited-term certificate to Quicksilver for continued operation of the Cardinal line until it receives its permanent certificate.[22]

[22] Section 7(c) of the NGA gives the Commission the authority to issue certificates and to condition them as necessary, in this case as to term. *See, e.g., Nornew Energy Supply, Inc.*, 95 FERC ¶ 61,134 (2001) (issuing a limited-term certificate authorizing, among other things, operation of an existing 7.63-mile pipeline pending the Commission's decision on the pipeline's application for a section 7(c) certificate of public convenience and necessity).

B. Louisville Gas and Electric Company

25. Louisville filed a motion to intervene and comments requesting the Commission to issue a certificate of limited jurisdiction over Quicksilver's gathering facilities. Louisville would like the Commission to assert jurisdiction to compel Quicksilver's response to Louisville's discovery requests concerning the gathering wells, which are adjacent to Louisville's Doe Run Storage Facility. Louisville believes that increased gas losses in the Doe Run Storage Facility correspond to an increase in Quicksilver's production activity in the Corydon Field. Louisville argues that the gas stored in the Doe Run Storage Facility once traveled through an interstate pipeline. Therefore, Louisville maintains, if the storage gas is migrating and subsequently being gathered by Quicksilver, the Commission has jurisdiction over Quicksilver's gathering activities because the gas being gathered once traveled in an interstate pipeline. We believe this reasoning mischaracterizes the nature of the Commission's gathering determinations.

26. As a result of this declaratory order, Quicksilver must seek a certificate of public convenience and necessity for the Cardinal line because the line's primary function is transmission. However, asserting jurisdiction over Quicksilver's gathering facilities to resolve an ownership dispute over gas gathered from wellheads, as Louisville requests, would not be appropriate. By definition, gathering is exempt from the Commission's jurisdiction under NGA section 1(b). As noted above, the NGA exemption explicitly applies to "the physical acts of drawing gas from the earth and preparing it for the first stages of distribution." Louisville is essentially asking the Commission to assert jurisdiction over a dispute regarding the molecular composition of the gas being produced through Quicksilver's wells. For the Commission to require even a limited jurisdiction certificate from Quicksilver for the "physical acts of drawing gas from the earth" would be in direct opposition to the NGA. The limited scope of a gathering proceeding before the Commission is not the appropriate venue for resolution of Louisville's dispute. Therefore, we decline to issue a limited jurisdiction certificate on this reasoning, and we deny Louisville's request for discovery.

IV. Environmental Review

27. Issuance of the limited-term certificate to Quicksilver qualifies as a categorical exclusion under section 380.4(a)(27) of the Commission's regulations.

V. Conclusion

28. For the reasons discussed above, the Commission finds that under the primary function test, Quicksilver's facilities upstream of the Cardinal station perform a non-jurisdictional gathering function, while the Cardinal line performs a jurisdictional transmission function.

The Commission orders:

(A) The Commission declares the primary function of Quicksilver's existing facilities upstream of the Cardinal station to be gathering, and thus such facilities are exempt from the Commission's jurisdiction under NGA section 1(b).

(B) The Commission declares that the primary function of the Cardinal line, from the Cardinal station to the interconnection with Texas Gas, is transmission, and Quicksilver must file for a certificate of public convenience and necessity pursuant to NGA section 7(c) within sixty days of the issuance of this order.

(C) The Commission issues Quicksilver a limited-term certificate for the transmission of gas through the Cardinal line that will terminate thirty days after the Commission issues an order on Quicksilver's application for a certificate of public convenience and necessity.

(D) Absent any changes in the representations provided by petitioner, the facilities upstream of the Cardinal station will remain non-jurisdictional gathering upon the transfer to BreitBurn.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.